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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY NEHL BOYLAN,

Defendant.

Case No. 2:22-CR-00482-GW

**EX PARTE APPLICATION FOR  
ORDERS SEEKING TO RESTRAIN  
THE PARTIES FROM RELEASING  
FURTHER INFORMATION OR  
OPINIONS ABOUT THIS CASE TO  
THE MEDIA AND REQUIRING  
THAT CERTAIN MOTIONS IN  
LIMINE BE REDACTED OR FILED  
UNDER SEAL**

Jerry Nehl Boylan, through his attorneys of record, Deputy Federal Public Defenders Georgina Wakefield, Gabriela Rivera, and Julia Deixler, hereby moves this Honorable Court *ex parte* for orders restraining the parties from releasing further information or opinions related to this case to the press or the public and requiring that certain motions in limine be redacted or filed under seal until the Court can make a preliminary determination about whether publicly filing the motion would risk Mr. Boylan's Sixth Amendment right to a fair trial.



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## MEMORANDUM OF POINTS AND AUTHORITIES

On September 1, 2023, the Los Angeles Times ran a front-page story that described the details of a confidential ATF report and quoted the opinions of an anonymous official who was “deeply involved in examining evidence from the *Conception* fire.” While the defense does not know exactly who leaked the confidential report or provided the quote bolstering its conclusions, it is reasonable to conclude that someone with access to the confidential report and someone who was “deeply involved in examining evidence” and aware of the ATF’s testing is likely a member of the prosecution team.<sup>1</sup> The Department of Justice Manual defines the prosecution team to include “federal, state, and local law enforcement officers and other government officials participating in the investigation and prosecution of the criminal case against the defendant.”<sup>2</sup>

These statements to the media by an agent of the prosecution team, made mere weeks before trial is set to begin, carry a grave risk of tainting the jury pool for Mr. Boylan’s trial, and thus undermine Mr. Boylan’s due process rights. This Court should prevent further tainting of the jury pool by entering an order restraining the parties, including “federal, state, and local law enforcement officers and other government officials participating in the investigation and prosecution of the criminal case against the defendant,” and the prospective witnesses in this case, from providing information or opinions to the press or the public about this case until the conclusion of trial.

### A. Procedural history

Jerry Boylan was the captain of the *Conception*, a 75-foot passenger boat owned

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<sup>1</sup> Department of Justice Manual, Title 9: Criminal, § 9-5.001(B)(2).

<sup>2</sup> The defense does not believe that an AUSA leaked the report or provided the quote. But all the law enforcement officers and agents who participated in the investigation are characterized as members of the prosecution team by case law and the Department of Justice (*see infra* note 1) and are bound by the same rules and obligations to avoid pretrial publicity and conduct that could plausibly taint the jury pool. *See, e.g.*, California Rules of Professional Conduct, Rules 3.8, 3.6.

1 by the Fritzler Family Trust and operated by Mr. Boylan's employer, Truth Aquatics,  
2 Inc. On September 2, 2019, a fire broke out aboard the *Conception* while it was  
3 anchored overnight at Santa Cruz Island. The fire spread quickly, and the boat burned  
4 to the waterline. Five people, including Mr. Boylan, who was serving as the captain of  
5 the *Conception*, escaped with their lives and survived the accident. Thirty-three  
6 passengers and one crewmember tragically perished. All the decedents were sleeping  
7 in the bunkroom below deck, and both exits from the bunkroom led to the same area of  
8 the boat, which was engulfed in flames. As a result, Mr. Boylan and the other survivors  
9 were unable to access or save any of the thirty-four people sleeping below deck.

10 The United States Attorney's Office led a criminal investigation with the Coast  
11 Guard Investigative Service (CGIS), the FBI, and the ATF. The ATF conducted an  
12 investigation into the potential cause and origin of the fire. The ATF issued a  
13 confidential report on January 4, 2021, which hypothesized that the fire originated in a  
14 garbage can on the main deck.<sup>3</sup> The ATF could not determine the cause of the fire.  
15 The NTSB also conducted an investigation and published a report on October 20, 2020.  
16 The NTSB concluded that the origin of the fire was likely inside the aft portion of the  
17 salon, not in the garbage can identified by the ATF. The report also identified  
18 contributing causes to the accident and to the loss of life.

19 On December 1, 2020, the government filed an indictment charging Mr. Boylan  
20 with seaman's manslaughter, and filed a First Superseding Indictment on July 19, 2022.  
21 On September 1, 2022, this Court dismissed the government's First Superseding  
22 Indictment for failure to allege an essential element of the offense, gross negligence.  
23 On October 18, 2022, the government filed the current indictment, which alleges that  
24 Mr. Boylan "acted with a wanton or reckless disregard for human life by engaging in  
25  
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27  
28 <sup>3</sup> The Court has not ruled on the admissibility of this opinion at trial.



misconduct, gross negligence, and inattention to his duties.” (ECF No. 1). Trial is scheduled to begin on October 24, 2023.

**B. The September 1, 2023 Los Angeles Times article describing the confidential ATF report and the opinions of a government official involved in the investigation**

The *Conception* fire has been the subject of sustained press coverage since the tragic accident in September 2019.<sup>4</sup> There is a Wikipedia article devoted to the accident.<sup>5</sup> There was an independent NTSB investigation, report, and public hearing that received and continues to receive media coverage.<sup>6</sup> And the Government’s prosecution of Mr. Boylan has similarly received intense media coverage.

Numerous media outlets ran stories about the case in September 2022, when this Court dismissed the government’s First Superseding Indictment for its failure to allege an essential element of the offense.<sup>7</sup> At the time, representatives from the United States

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<sup>4</sup> See, e.g., Faith Karimi, *Flames blocked escape routes on boat and trapped sleeping divers, official says. 33 bodies have been found*, CNN (Sept. 4, 2019), <https://www.cnn.com/2019/09/04/us/california-boat-fire-wednesday/index.html>; Jayme Deerwester, *California dive-boat fire highlights need for more than one exit from sleeping quarters*, USA TODAY (Sept. 2, 2019), <https://www.usatoday.com/story/travel/news/2019/09/02/california-boat-fire-highlights-need-secondary-emergency-exits/2191195001/>; Jill Cowan, *What Was It Like Aboard the Conception?*, NEW YORK TIMES (Sept. 4, 2019), <https://www.nytimes.com/2019/09/04/us/conception-boat-scuba-divers.html>; Mark Puente, et al., *Before Conception boat fire, some captains say Coast Guard safety rule was ignored*, LOS ANGELES TIMES (Dec. 29, 2019), <https://www.latimes.com/california/story/2019-12-29/conception-boat-fire-several-captains-didnt-designate-roving-watches-to-spot-dangers>.

<sup>5</sup> [https://en.wikipedia.org/wiki/Sinking\\_of\\_MV\\_Conception#cite\\_ref-Guardian-190904\\_3-0](https://en.wikipedia.org/wiki/Sinking_of_MV_Conception#cite_ref-Guardian-190904_3-0)

<sup>6</sup> Wallace et al., *Dive Boat Disaster Likely Caused by Charging Batteries and Lack of Watchman, NTSB Says*, CNN (October 20, 2020), <https://www.cnn.com/2020/10/20/politics/conception-dive-boat-disaster-causes-ntsb/index.html>

<sup>7</sup> See, e.g., Richard Winton, *Feds say captain saved himself as California boat fire killed 34. But prosecution hits a wall*, LOS ANGELES TIMES (Sept. 3, 2022), <https://www.latimes.com/california/story/2022-09-03/captain-conception-boat-fire-killed-34-people-prosecution-case>; Vimal Patel, *Manslaughter Indictment Dismissed in 2019 Dive Boat Fire That Killed 34*, NEW YORK TIMES (Sept. 2, 2022), <https://www.nytimes.com/2022/09/02/us/jerry-boylan-conception-captain-indictment->

1 Attorney's Office gave statements to the press.<sup>8</sup> Mr. Boylan and the defense team did  
 2 not speak to the press.<sup>9</sup> Numerous local and national media outlets again reported on  
 3 the case when the government re-indicted Mr. Boylan in October 2022.<sup>10</sup> The press  
 4 coverage has continued since.

5 Much of the coverage of the criminal case has been critical of Mr. Boylan. For  
 6 example, a headline in the Los Angeles Times that ran after the Indictment in the  
 7 original case was dismissed states, "Feds say captain saved himself as California boat  
 8 fire killed 34. But prosecution hits a wall."<sup>11</sup>

9 Despite already sustained reporting and coverage of the accident and criminal  
 10 case, an unknown individual leaked a confidential ATF report to the Los Angeles  
 11 Times less than two months before trial.<sup>12</sup> Another, or perhaps the same unknown  
 12 individual, described as "an official who was deeply involved in examining evidence  
 13

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14 [dismissed.html](https://www.reuters.com/world/us/judge-throws-out-indictment-captain-2019-california-boat-fire-that-killed-34-2022-09-02/); Dan Whitcomb, *Judge throws out indictment of captain in 2019*  
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17 <sup>8</sup> Patel, *supra*; see also Whitcomb, *supra*.

18 <sup>9</sup> Patel, *supra*; Whitcomb, *supra*.

19 <sup>10</sup> Gregory Yee, *Dive boat captain faces new charge in California's worst modern*  
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 22 *Former California dive boat captain indicted on misconduct charge in connection with*  
*fire that killed 34*, CNN (Oct. 19, 2022),  
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24 <sup>11</sup> Richard Winton, *Feds Say Captain Saved Himself as California Boat Fire*  
 25 *Killed 34. But Prosecution Hits a Wall.*, LOS ANGELES TIMES (Sept. 3, 2019),  
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26 <sup>12</sup> Richard Winton, *Conception boat fire that killed 34 people started in plastic*  
 27 *trash can, confidential report says*, LOS ANGELES TIMES (Sept. 2, 2023),  
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1 from the Conception fire but was not authorized to discuss it publicly” provided a quote  
2 bolstering the fire investigation that was done in this case. The article appeared on the  
3 front page of the newspaper and was titled “Conception boat fire that killed 34 people  
4 started in plastic trash can, confidential report says.”<sup>13</sup> The article describes the methods  
5 by which the ATF attempted to determine the fire’s “point of origin and cause,”  
6 explaining that the ATF “conducted a series of burn tests at their Maryland research lab,  
7 which concluded the blaze began in a rubbish container and then quickly spread.”<sup>14</sup>  
8 The Times reported that an ATF spokeswoman “said the bureau would not comment on  
9 the report, which has not been publicly disclosed because of ongoing criminal and civil  
10 court proceedings involving the inferno.”<sup>15</sup>

11 But despite the fact that the ATF report is confidential, the article quotes from it  
12 extensively. The article does not state who leaked the confidential report to the press.  
13 The article also quotes a government “official who was deeply involved in examining  
14 evidence from the Conception fire but was not authorized to discuss it publicly.”<sup>16</sup> This  
15 anonymous official told the Times: “This is one of the most thorough investigations of  
16 a vessel fire I have seen . . . . They did everything possible to re-create the fire.”<sup>17</sup> A  
17 family member of one of the decedents is also quoted in the article, saying “the ATF  
18 report is important ‘if it bolsters the manslaughter case and sends the captain to  
19 prison.’”<sup>18</sup>

20 The article references the conflicting conclusions drawn by the NTSB report—  
21 that the fire began in the salon of the *Conception*—and the ATF report—that it started  
22 in a trash can outside the salon. But the article describes the NTSB report as the result  
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24 <sup>13</sup> *Id.*

25 <sup>14</sup> *Id.*

26 <sup>15</sup> *Id.*

27 <sup>16</sup> *Id.*

28 <sup>17</sup> *Id.*

<sup>18</sup> *Id.*

1 of “initial investigations,” and states, “[u]ltimately, ATF investigators focused on a 23-  
 2 gallon Rubbermaid Slim Jim garbage bin that sat beneath the stairs of the main deck.”<sup>19</sup>  
 3 The article continues by quoting from the confidential ATF report: “The report,  
 4 authored by ATF Special Agent Derek J. Hill in January 2021, concluded that ‘after  
 5 conducting a systematic fire scene examination, reviewing witness statements,  
 6 examining pre-fire and fire photographs and videos, and conducting test fires, by  
 7 inspecting physical evidence, interpreting fire patterns, considering fire dynamics,’  
 8 agents determined ‘the fire originated in the garbage container located under the  
 9 staircase.’”<sup>20</sup> The article also states, “The 197-page report noted that Boylan smoked  
 10 cigarettes, but he said he threw them overboard.”<sup>21</sup> In total, the article names Mr.  
 11 Boylan seven times, stating (incorrectly) that he “has been charged with 34 counts of  
 12 manslaughter” and “is scheduled to be tried in federal court next month.”<sup>22</sup>

13 The report has been picked up by other media outlets, including ABC 7 (a Los  
 14 Angeles affiliate), KSBY (the NBC affiliate for the Central Coast), Noozhawk (a Santa  
 15 Barbara news source), the Santa Barbara Edhat, and the Brunswick News. Videos  
 16 about the report can be viewed on Youtube as well.

17 This is not the first time confidential information from the ATF, including by  
 18 witnesses who may be called to testify by the government at trial, has been released.  
 19 Mr. Hill and ATF employee Jonathan Butta, who conducted the on-scene investigation  
 20 of the *Conception* fire and prepared reports that were incorporated into Mr. Hill’s final  
 21 report, arranged to give a presentation entitled “In-Depth Case Study: The *Conception*”  
 22 at an annual conference and training for the International Association of Marine  
 23  
 24

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25 <sup>19</sup> *Id.*

26 <sup>20</sup> *Id.*

27 <sup>21</sup> *Id.*

28 <sup>22</sup> *Id.*

1 Investigators (“IAMI”) in February 2023. The conference was attended by over 100  
2 attendees in the marine investigation industry.

3 While Mr. Hill ultimately could not attend the conference, he and Mr. Butta  
4 prepared lengthy PowerPoint presentations and Mr. Butta presented them at the  
5 conference. The presentation lasted three hours and covered a wide range of topics  
6 related to the ATF’s investigation of the fire aboard the *Conception* and the ATF’s  
7 theories related to how the fire started and how quickly it spread before claiming the  
8 boat. Among other things, Mr. Butta discussed his view of witness statements and fire  
9 testing. Mr. Butta relayed many portions of the confidential report to conference  
10 attendees. The defense team is not aware of any non-disclosure agreement that the  
11 participants had to sign to keep the information they received about the report or the  
12 investigation confidential even though this case was still pending trial.

13 **C. Restraining contacts with the press is necessary to prevent further**  
14 **pollution of the jury pool and to preserve Mr. Boylan’s due process**  
15 **rights.**

16 “Due process requires that the accused receive a trial by an impartial jury free  
17 from outside influences. Given the pervasiveness of modern communications and the  
18 difficulty of effacing prejudicial publicity from the minds of the jurors, [t]he trial courts  
19 must take strong measures to ensure that the balance is never weighed against the  
20 accused.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 553 (1976) (quoting *Sheppard*  
21 *v. Maxwell*, 384 U.S. 333, 362-63 (1966)); *see also Gentile v. State Bar of Nevada*, 501  
22 U.S. 1030, 1070 (1991) (“The outcome of a criminal trial is to be decided by impartial  
23 jurors, who know as little as possible of the case, based on material admitted into  
24 evidence before them in a court proceeding. Extrajudicial comments on, or discussion  
25 of, evidence which might never be admitted at trial . . . obviously threaten to undermine  
26 this basic tenet.”).

27 In some cases, extensive pretrial publicity can become so prejudicial to the  
28 accused’s due process rights that courts will restrain the press from publishing certain

1 statements or facts about a case. *Nebraska Press Ass’n*, 427 U.S. at 542-45. Such “gag  
2 orders” against the press raise difficult constitutional questions, requiring courts to  
3 balance the First Amendment rights of a free press against the due process rights of the  
4 accused. *Id.* at 562-66.

5 But restraints applicable only to participants in the trial proceedings—the parties,  
6 their agents, and their witnesses—pose no difficult tradeoffs, and are, instead, a  
7 favored, less drastic measure to protect the rights of the accused in a trial gaining  
8 widespread press attention. As the Supreme Court has explained:

9 “Neither prosecutors, counsel for defense, the accused, witnesses, court  
10 staff nor enforcement officers coming under the jurisdiction of the court  
11 should be permitted to frustrate its function. Collaboration between  
12 counsel and the press as to information affecting the fairness of a criminal  
13 trial is not only subject to regulation, but is highly censurable and worthy  
14 of disciplinary measures.”

15 *Id.* at 553-54 (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966)); *see*  
16 *also Radio & Television News Ass’n of S. California v. U.S. Dist. Ct. for Cent.*  
17 *Dist. of California*, 781 F.2d 1443, 1444 (9th Cir. 1986) (“We hold that restraints  
18 on the statements of trial participants, although indirectly denying the media  
19 access to those participants, do not infringe freedom of the press under the first  
20 amendment.”); *United States v. Richey*, 924 F.2d 857, 863 (9th Cir. 1991)  
21 (holding that government employee is not protected by the First Amendment  
22 when he breaches duties of confidentiality in disclosures to the press).

23 Courts have explained that orders preventing press contacts or other public  
24 statements by trial participants can prevent the need for more drastic measures to  
25 protect the rights of the accused, such as changes of venue or lengthy  
26 continuances. For example, in *United States v. Campa*, 459 F.3d 1121 (11th Cir.  
27 2006), the Eleventh Circuit held that the trial court did not abuse its discretion in  
28 denying a motion to change venue, despite extensive pretrial publicity. *Id.*



1 at 1144-45. The Eleventh Circuit reasoned that the trial court avoided the need  
2 to change venue by “maintain[ing] strict control over the proceedings by  
3 employing various curative measures to insulate the jury from any outside  
4 influence.” *Id.* at 1149. These “curative measures,” which the Eleventh Circuit  
5 described favorably, were extensive. First and foremost, “[f]rom the  
6 commencement of the case, the parties, counsel, and witnesses were under a  
7 strict gag order, as well as a sequestration order, which prohibited them from  
8 releasing information or opinion that would interfere with the trial or otherwise  
9 prejudice the defendants.” *Id.* When, during the voir dire process, family  
10 members of the victims gave “fairly innocuous” statements to the press, the trial  
11 court extended the gag order to the victims’ families and “instructed that it would  
12 no longer permit the victims’ families to be present during voir dire ‘if there are  
13 efforts made to pollute the jury pool.’” *Id.* at 1136. Finally, the trial court  
14 “maintained control over the seating in the courtroom” by “designating certain  
15 rows to certain groups and requiring the media to sit in the back row,” and the  
16 court “prevented the media from accessing the voir dire questions by sealing  
17 them during jury selection.” *Id.* at 1149; *see also United States v. Orlando-*  
18 *Figuerola*, 229 F.3d 33, 42 (1st Cir. 2000) (affirming district court’s denial of  
19 trial continuance, reasoning that order restraining press contacts by trial  
20 participants successfully mitigated prejudice of pretrial publicity).

21 Here, to secure Mr. Boylan’s due process rights, the Court should enter an  
22 order restraining the parties, members of the prosecution team, and the  
23 prospective witnesses in this case from “from releasing information or opinion”  
24 about the case until the end of the trial. *Campa*, 459 F.3d at 1149. The extensive  
25 pretrial publicity about this case already poses a grave danger that Mr. Boylan’s  
26 jury will not be “free from outside influences” and preconceived notions about  
27 the case. *Nebraska Press Ass’n*, 427 U.S. at 553. This risk has now been  
28 substantially heightened by an official “deeply involved in examining evidence”

1 who knew about the ATF's experiments and provided his or her opinions about a  
 2 confidential report—the ATF report—to the Los Angeles Times. The leak of the  
 3 report and the agent's quoted statements describing it led to a front-page story in  
 4 the most prominent newspaper in this district. Moreover, the agent's statements  
 5 to the press bolster the credibility of the ATF's investigation and conclusions  
 6 about a key issue in the trial—the origin of the fire—and correspondingly  
 7 diminish the contrasting investigation and conclusions drawn by the NTSB.  
 8 Indeed, the agent went so far as to tell the newspaper that the ATF report is the  
 9 result of “one of the most thorough investigations of a vessel fire I have seen . . .  
 10 . They did everything possible to re-create the fire.”<sup>23</sup>

11 The comparative credibility of the ATF and NTSB's competing  
 12 investigations and their conflicting conclusions will be a primary disputed issue  
 13 at trial. But a government official now seems to be litigating this issue, prior to  
 14 trial, in the press. This prejudicial and improper conduct needs to be restrained.

15 **D. Certain motions in limine should either be redacted or filed and**  
 16 **maintained under seal to prevent prospective jurors from being further**  
 17 **tainted by awareness of evidence that may be excluded at trial.**

18 In cases with significant pretrial publicity, such as this one, courts discourage  
 19 blanket orders requiring that all documents be filed under seal. *See, e.g., Associated*  
 20 *Press v. U.S. Dist. Ct. for Cent. Dist. of California*, 705 F.2d 1143 (9th Cir. 1983).  
 21 However, there are “less drastic procedures that will ensure that parties who  
 22 contemplate filing any documents that might actually prejudice the right to a fair trial  
 23 will act responsibly.” *Id.* at 1146. Those procedures include requiring the parties to  
 24 “file the few documents of that nature that must be filed under seal.” *Id.*

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25  
 26 <sup>23</sup> Richard Winton, *Conception boat fire that killed 34 people started in plastic*  
 27 *trash can, confidential report says*, LOS ANGELES TIMES (Sept. 2, 2023),  
 28 <https://www.latimes.com/california/story/2023-09-02/deadly-conception-boat-fire-started-in-plastic-trash-can-atf-report-reveals>.



1 Here, there is at least one motion in limine the government intends to file that  
2 risks prejudicing Mr. Boylan's right to a fair trial: a motion to admit certain categories  
3 of evidence under Federal Rule of Evidence 404(b).<sup>24</sup> If reported on by the press and  
4 subsequently excluded by this Court at trial, there is a substantial risk that prospective  
5 jurors will learn of and be tainted by inadmissible evidence. Thus, Mr. Boylan seeks an  
6 order requiring the parties to file any motion in limine that risks public dissemination of  
7 possibly inadmissible evidence be redacted or filed under seal until the Court can make  
8 a determination of whether publicly filing the document would pose a risk to Mr.  
9 Boylan's Sixth Amendment right to a fair trial.

10  
11 Respectfully submitted,

12 CUAUHTEMOC ORTEGA  
13 Federal Public Defender

14 DATED: September 6, 2023

By /s/ Georgina Wakefield

15 GEORGINA WAKEFIELD  
16 GABRIELA RIVERA  
17 JULIA DEIXLER  
Deputy Federal Public Defenders  
Attorneys for JERRY NEHL BOYLAN

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27 <sup>24</sup> Exhibit A, which is a copy of two 404(b) notices sent by the government, will  
28 be lodged under seal.

**DECLARATION OF COUNSEL**

I, Georgina Wakefield, hereby state and declare as follows:

1. I am a Deputy Federal Public Defender in the Central District of California assigned to represent Jerry Nehl Boylan in the above-titled action.

2. On September 2, 2023, I saw the article authored by Richard Winton of the Los Angeles Times referenced in this application. Over the next few days, I saw that the report had been picked up by other news outlets including ABC 7 (a Los Angeles affiliate), KSBY (the NBC affiliate for the Central Coast), Noozhawk (a Santa Barbara news source), the Santa Barbara Edhat, and the Brunswick News. Videos about the report can be viewed on Youtube as well. I have been contacted by other media outlets for comment about the Los Angeles Times article, but I have not provided any comment.

3. Earlier this year, I became aware Mr. Hill and Mr. Butta arranged to give a presentation entitled “In-Depth Case Study: The *Conception*” at an annual conference and training for the International Association of Marine Investigators (“IAMI”) on February 27, 2023.

4. I have been informed that the conference was attended by over 100 attendees in the marine investigation industry. Mr. Hill ultimately could not attend the conference at the last minute. Mr. Butta, however, attended and gave the presentations he and Mr. Hill created. The presentation, which included PowerPoint presentations, lasted three hours and covered a wide range of topics related to the ATF’s investigation of the fire aboard the *Conception* and the ATF’s theories related to how the fire started and how quickly it spread before claiming the boat. Among other things, Mr. Butta discussed his view of witness statements and fire testing. Mr. Butta relayed many portions of the confidential report to conference attendees. The defense team is not aware of any non-disclosure agreement that the participants had to sign to keep the information they received about the report or the investigation confidential even though this case was still pending trial.

1           5.     On September 5 and 6, 2023, counsel for the government and I discussed  
2 this application. Counsel for the government indicated that they are opposed to the  
3 application and intend to file a brief in opposition.  
4

5           I declare under penalty of perjury that the foregoing is true and correct to the best  
6 of my knowledge.  
7

8 DATED: September 6, 2023

By /s/ Georgina Wakefield

GEORGINA WAKEFIELD